

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

ROBERTO REYES-PEREZ,

Plaintiff,

v.

STATE INSURANCE FUND, et al.,

Defendants.

Civil No. 11-1070 (JAF)

OPINION AND ORDER

In this action, Plaintiff Roberto Reyes-Pérez (“Plaintiff”) sued his former employer, Puerto Rico’s State Insurance Fund Corporation (“SIFC”) and several of its officers. (Docket No. 1 at 2-3.) Plaintiff alleged that his dismissal from the SIFC was unconstitutional political discrimination.¹ Defendants moved for summary judgment (Docket No. 33), Plaintiff opposed (Docket No. 43), Defendants responded (Docket No. 52), and Plaintiff replied (Docket No. 60). We granted Defendants’ motion and dismissed the case. (Docket No. 82.) Now, Plaintiff files this motion for reconsideration. (Docket No. 83.) Defendants oppose. (Docket No. 85.) For the reasons that follow, we deny Plaintiff’s motion.

¹ Plaintiff alleged violations of his rights under the First, Fifth, and Fourteenth Amendments of the U.S. Constitution. (Id.) Plaintiff also brought supplemental claims under various Commonwealth statutes, including P.R. Law No. 100, of June 30, 1959, as amended, 29 L.P.R.A. § 146 et seq. (“Law 100”); P.R. Law No. 115, of December 20, 1991, as amended, 29 LPRA §§ 146–151 (“Law 115”), as well as Articles 1802 and 1803 of the Puerto Rico Civil Code, 31 L.P.R.A. § 5141 and § 5142; and the Constitution of Puerto Rico. (Docket No. 1 at 2.)

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I.**Standard**

Plaintiff now brings a motion for reconsideration. (Docket No. 83.) In this circuit, “a motion asking ‘the court to modify its earlier disposition of a case because of an allegedly erroneous legal result is brought under [Rule] 59(e)’” of the Federal Rules of Civil Procedure. Cahoon v. Shelton, 647 F.3d 18, 29 (1st Cir. 2011) (quoting In re Sun Pipe Line Co., 831 F.2d 22, 24 (1st Cir. 1987)). First Circuit case law “generally offer[s] three grounds for a valid Rule 59(e) motion: An ‘intervening change’ in the controlling law, a clear legal error, or newly-discovered evidence.”² Soto-Padró v. Pub. Bldgs. Auth., 675 F.3d 1, 11 (1st Cir. 2012) (quoting Morán Vega v. Cruz Burgos, 537 F.3d 14, 18 (1st Cir. 2008)). Plaintiffs’ motion argues that our judgment was based on a clear legal error. We disagree.

II.**Analysis**

In our opinion, we noted that “Plaintiff has largely failed to comply with the applicable rules governing summary judgment practice in this district.” (Docket No. 82 at 2.) We further noted that “[o]n many critical matters in this case, ‘Plaintiff’s denials and qualifications are either irrelevant to the matter at hand, add facts that should have been filed in a separate statement, or consist of mere speculation, generalities, conclusory assertions, improbable inferences, and, for lack of a better phrase, a lot of ‘hot air.’” (Id.) (quoting

² The First Circuit has also mentioned prevention of “manifest injustice” as another narrow ground for granting a Rule 59(e) motion. Marie v. Allied Home Mortg. Corp., 402 F.3d 1, 7 n.2 (1st Cir. 2005) (citing 11 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2810.1 (2d ed. 1995)).

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1 Gomez-Gonzalez v. Rural Opportunities, Inc., 658 F.Supp. 2d 325, 336 n.16 (D.P.R. 2009)
2 (internal citations omitted). Plaintiff's motion for reconsideration fares little better. The
3 present motion contains the same style of long-winded argument, citations that are difficult
4 to follow, and references to irrelevant facts as Plaintiff's earlier filings. Even if we were
5 persuaded by Plaintiff's arguments, we reiterate that "a party cannot use a Rule 59(e)
6 motion to rehash arguments previously rejected or to raise ones that could, and should, have
7 been made before judgment issued." Soto-Padro v. Public Bldgs. Auth., 675 F.3d 1, 5 (1st
8 Cir. 2012) (internal quotations and citations omitted). More importantly, Plaintiff's motion
9 fails to undermine the central rationales for our summary judgment order.

10 In our opinion, we gave several reasons for granting Defendants' motion. (Docket
11 No. 82.) One reason was our finding that Plaintiff's dismissal was valid under local law and
12 personnel regulations because he lacked the requisite five years of experience in contracting.
13 (Id. at 12.) But, beyond that, we also held that Defendants had carried their burden of
14 showing that Plaintiff would have been dismissed even if he was an NPP member.
15 Plaintiff's motion for reconsideration challenges only the first of these rationales. (Id. at
16 14.)

17 Plaintiff argues that the question of whether his appointment complied with the
18 "Merit Principle" was for the jury. (Docket No. 83.) We disagree. As we noted in our
19 opinion, in evaluating an employer's Mt. Healthy defense, "the trier of fact essentially
20 becomes a kind of super-personnel board making determinations about whether particular
21 personnel actions violated state or local personnel laws." (Id.) (quoting Sanchez-Lopez v.

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1 Fuentes-Pujols, 375 F.3d 121, 126 (1st Cir. 2004). We determined, based on the
2 uncontested facts, that the SIFC's audit legitimately found Plaintiff's reappointment in
3 violation of the "Merit Principle," because Plaintiff lacked five years of experience
4 contracting goods and services. (Docket No. 82 at 12.) Plaintiff points to several pieces of
5 evidence that he argues undermine this conclusion: Missing personnel files, past
6 certifications by former human resources professionals, the politicized nature of the SIFC
7 and its audit process, and Rivera's "understanding" that Plaintiff did not comply. (Docket
8 No. 83.) None of these are sufficient to create a genuine dispute. To present a question for
9 the jury, Plaintiff was required to provide some direct evidence that he possessed the
10 requisite experience. It is telling that instead of demonstrating his compliance with the rule,
11 he relies on innuendo and allegations of improper motives at the SIFC. (Docket No. 83.)

12 Plaintiff makes much of the fact that a past director of the SIFC from the previous
13 administration certified his compliance with the "Merit Principle." (Docket No. 83.) We
14 are unimpressed. In our opinion, we noted that "the outgoing party attempts to secure the
15 continued tenure of its members in public jobs through a variety of devices, such as
16 reclassifying policy-type appointments as career positions." (Docket No. 82 at 14) (quoting
17 Morales-Santiago v. Hernandez-Perez, 488 F.3d 465, 467 (1st Cir. 2007). That, we held,
18 was exactly what appeared to happen in Plaintiff's case. Just months before the elections in
19 2008, Plaintiff's position was reclassified from a trust to a career position, despite the fact
20 that he was under-qualified, per SIFC rules and regulations, for the position. This was just
21 the sort of personnel transaction that Defendants' investigations were designed to root out.

